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By ECF

Honorable Gregory H. Woods
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007

MEMORANDUM ENDORSED

**Re: United States v. Marlon Chirinos
21-CR-581 (GHW)**

Your Honor:

We write on behalf of Mr. Marlon Chirinos to request a 90-day adjournment of Mr. Chirinos's sentence, which is currently scheduled for September 13, 2023. The government consents to this request. This is our fifth adjournment request.

The Government continues to argue that Mr. Chirinos is a career offender under the relevant Guidelines provision, despite the Second Circuit's 3-0 decision in *United States v. Gibson*, No. 20-3049 (2d Cir. Dec. 6, 2022), which held that the state criminal conviction at issue here is not an adequate predicate for the Guidelines career offender provision. The government filed a petition for rehearing, which the panel denied. The mandate has issued in *Gibson*.

As noted in our prior letter requests, the government has argued in *United States v. Minter*, No. 21-3102 (2d Cir. Mar. 17, 2023), and plans to argue here, that the holding of *Gibson* is limited to the facts of that case and is not precedential. The Second Circuit [heard oral argument in *Minter* on March 23, 2023](#). Despite the Court's skepticism of the Government's position in the oral argument, we are respectfully requesting an adjournment to await this decision.

As we have noted previously, the stakes are very high for Mr. Chirinos. His guideline range will either be 70-87 or 151-188 months. In addition, the government has declined to alter its standard appeal waiver language. As such, Mr. Chirinos stands to be sentenced on September 13 without any recourse if this Court were to find the career offender provision applicable and the Second Circuit were to issue an opinion subsequently without any material change to the *Gibson* holding and reasoning. This would not be a just result.

Despite the conditions at the MDC, Mr. Chirinos supports this request and will use the extra time in New York to benefit from family visits before he is transferred.

For these reasons, we ask that the current schedule be adjusted to reflect that Mr. Chirinos's sentencing submission be due on December 1, 2023, the government's submission be due on December 8, and the sentencing be scheduled for December 15, or as soon thereafter as

the Court schedule allows. For scheduling purposes, we also note that we teach on Tuesdays from 1030am-1220pm, and thus are unavailable at that time for an adjourned sentence.

Thank you for your consideration of this matter.

Respectfully,

/s/

Michael W. Martin

Ian Weinstein

Lincoln Square Legal Services, Inc.

Attorneys for Mr. Marlon Chirinos

cc: **By ECF & Email**

Elizabeth Espinosa, Esq.

Assistant United States Attorney

Southern District of New York

Application granted in part. The sentencing hearing scheduled to take place on September 14, 2023 is adjourned to December 22, 2023 at 2:00 p.m. The defendant's sentencing submissions are due no later than December 8, 2023. The Government's sentencing submissions are due no later than December 15, 2023.

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 99.

SO ORDERED.

Dated: August 29, 2023

New York, New York



GREGORY H. WOODS
United States District Judge